



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET**

**CAUSE NO. 9 OF 2017**

**WAWERU MBOGO**

**CLAIMANT**

**v**

**G4S SECURITY SERVICES (K) LTD**

**RESPONDENT**

**JUDGMENT**

1. Waweru Mbogo (Claimant) was employed as a security guard by G4S Security Services (K) Ltd (Respondent) on 23 June 1993.

2. On 14 September 2016, the Respondent informed the Claimant of his summary dismissal on the ground of negligence. The particulars given in the dismissal letter were *fighting a client's employee ..... and failing to adhere to the G4s values and code of conduct...*

3. The dismissal aggrieved the Claimant and on 29 March 2017, he instituted legal action against the Respondent and he stated the Issues in Dispute as

- a) Whether the claimant was an employee of the Respondent;
- b) Whether the Claimant was given a fair and valid reason for termination of employment;
- c) Whether the Claimant was subjected to a fair disciplinary hearing before termination from employment by the Respondent;
- d) Whether the claimant was unlawfully, unprocedurally and unfairly terminated from employment by the Respondent;
- e) Whether the respondent proved the reason for termination of the claimant was for a fair reason;
- f) Whether the claimant is entitled to compensation for unlawful, unprocedurally and unfair termination of employment as prayed for in this memorandum of claim;
- g) Whether the claimant is entitled to an award of certificate of service;
- h) Who should pay costs and interest of the suit?

4. According to 2 affidavits of service sworn by Joseph Ochieng Onawa and filed in Court on 27 July 2017, the Respondent was served with Notice of Summons and the pleadings, and it acknowledged service on 7 May 2017, and on 25 May 2017 with a mention notice (stamped copy of Summons and Mention Notice were attached to the affidavits).

5. Despite the service, the Respondent did not enter appearance and/or file a Response and therefore the Cause proceeded to hearing as an undefended Cause on 28 September 2017.
6. The Claimant gave sworn testimony and produced employment records and also filed written submissions on 9 October 2017.
7. The Court has given due consideration to the pleadings, evidence and submissions.
8. The Claimant in his sworn testimony stated that he was deployed by the Respondent to provide security services at *Mini-Bakeries* and that on 16 August 2016 he caught an employee of the Bakery with bread and yeast, and that in the process of inspecting the employee there was an altercation (pushing and shoving) as a result of which the Respondent's supervisor directed him to hand over and leave the assignment.
9. The next day, he reported to the Respondent's offices and was informed that a disciplinary hearing would be conducted on 30 August 2016. The hearing aborted due to the absence of the Human Resources Officer and was postponed to 31 August 2016.
10. On 31 August 2016, the hearing proceeded in the absence of the shop steward whom he had requested to accompany him to the hearing after which he was issued with the summary dismissal letter.
11. According to the Claimant, the dismissal was unfair because he was not given notice of dismissal or allowed to be accompanied by a colleague of his choice.
12. The Claimant also disclosed that he appealed but there was no response to the appeal.
13. The Claimant further stated that he was not paid wages up to the date of dismissal and that he did not take the annual leave for 2016.
14. The Claimant's testimony remained unchallenged/uncontroverted.
15. The Court can therefore conclude therefore that he has discharged the burden of showing there was unfair termination of employment by dint of section 47(5) of the Employment Act, 2007.
16. In terms of sections 43 and 45 of the Employment Act, 2007, it was incumbent upon the Respondent to prove the reasons for dismissing the Claimant and that the reasons were fair and valid.
17. The Respondent, by failing to file a Response and/or attend the hearing has failed to discharge the burden imposed on employers and the Court has no hesitation in finding that there was unfair termination of employment.

### **Appropriate remedies**

#### ***Pay in lieu of notice***

18. With the finding on fairness of termination of employment and by dint of section 35(1)(c) of the Employment Act, 2007, the Court finds that the Claimant is entitled to the equivalent of 1 month salary in lieu of notice (salary at separation was Kshs 11,330/-).

#### ***Compensation***

19. Considering that the Claimant served the Respondent for 23 years, the Court will award the maximum compensation (gross salary at termination was Kshs 21,812/-).

#### ***Pro rata leave***

20. Under this head, the Claimant sought Kshs 5,948/- for the 9 months he worked in 2016. The Court will allow the relief.

### ***Overtime***

21. This head of claim was abandoned during the hearing.

### **Conclusion and Orders**

22. The Court finds and holds that the summary dismissal of the Claimant was unfair and awards him and orders the Respondent to pay him

(i) Pay in lieu of notice	Kshs 11,330/-
(ii) Compensation	Kshs 261,744/-
(iii) Prorated leave	Kshs 5,948/-
<b>TOTAL</b>	<b>Kshs 279,022/-</b>

23. Claimant to have costs.

**Delivered, dated and signed in Eldoret on this 3<sup>rd</sup> day of November 2017.**

**Radido Stephen**

**Judge**

### **Appearances**

For Claimant	Mr. Kirwa instructed by Mwakio, Kirwa & Co. Advocates
Respondent	did not participate
Court Assistants	Nixon/Etyang